IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2651 OF 2007

Madhukar M.Nalawande ...Appellant

vs.

Municipal Corporation of
Greater Bombay ...Respondents

Mr.A.A.Siddique i/b Mr.M.P.Vashi for the Appellant
Mr.J.J.Xavier for Respondents

CORAM: A.S.OKA,J.
DATE : NOVEMBER 27,2007.

P.C.:

. Not on board. Taken on board.

1. This Appeal was on board yesterday and today it is kept on the list of production matters to enable the Appellant to make a statement. The Advocate for the Appellant states that there is a power of attorney dated 19th April 1993 executed by the Appellant in favour of Shri Baddruddin Abdul Rehman Shaikh. He states that the Appellant undertakes to produce the said power of attorney before the trial court. The learned Advocate for the Respondent states that the power of attorney is not legal and valid as the same does not pertain to the suit property.

2. By the impugned Judgment and Order dated 18th August 2007, the suit filed by the Appellant has been dismissed only on the ground that though the suit is filed through the constituted

attorney, the original power of attorney is not produced. The Appellant through his Advocate has undertaken to produce the power of attorney before the trial court. If such power of attorney is produced, it is obvious that the same will be scrutinised by the concerned Officer of the trial court whether the same is proper and valid and whether it pertains to the suit structure. As the Appellant has now shown willingness to produce the original power of attorney before the trial court, the impugned order deserves to be quashed and set aside and the L.C.Suit no.1152 of 2003 filed by the Appellant deserves to be restored.

3. Hence, I pass the following order :

i) The statements of the Appellant that the Appellant undertakes to produce the power of attorney is accepted.

ii) In view of this statement, the order dated 18th August 2007 is quashed and set aside and the L.C.Suit No.1152 of 2003 is restored to file subject to the condition that the Appellant will produce the original power of attorney before the Trial court on or before 17th December 2007. If power of attorney is not produced on or before the said date, the impugned order will stand.

iii) The power of attorney produced by the Appellant will be

scrutinised by the trial court. If the said power of attorney is not legal and valid or the same is not pertained to the suit property, the trial court is free to pass appropriate order after hearing the parties.

iv) All contentions of the parties in the pending suit are expressly kept open.

v) Appeal is accordingly allowed.

vi) Parties and the trial court to act upon an authenticated copy of this order.

JUDGE